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Attorney for the Plaintiff
HERMAN MENEZES, LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * *

IN RE:

ALVIN A. BRESCIANI, an individual

Debtor.

HERMAN MENEZES, LLC, a Nevada
Limited Liability Company,

Plaintiff,

Vs.

ALVIN BRESCIANI, an individual,

Defendant.

Case No. 3:22-bk-50266-hlb

Adv. Case No: 22-05012-hlb

Chapter 7

Hearing Date: 11/9/2023

Hearing Time: 10:00 a.m.

**MOTION FOR SUMMARY
JUDGMENT**

TO THE COURT AND ALL PARTIES IN INTEREST:

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COMES NOW, HERMAN MENEZES, LLC, by and through the undersigned counsel, and hereby files the following Motion for Summary Judgment against Defendant ALVIN BRESCIANI, under Fed R. Civ. P. 56 and Fed. R. Bankr. P. 7056.

This Motion is made and based upon all the pleadings and records on file for this proceeding together with every exhibit that is mentioned herein or attached hereto (each of which is incorporated by this reference as though it were set forth herein haec verba), if any there be, as well as the points and authorities set forth directly hereinafter.

Pursuant to LR 9014.2, Plaintiff consents to final judgment being entered by this Court.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Procedural Background

On May 16, 2022, the Defendant filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code, thereby initiating bankruptcy case number 3:22-bk-50266, in the U.S. Bankruptcy Court for the District of Nevada. In Schedule F, filed concurrently with the petition, Defendant disclosed unsecured creditors' holdings debts totaling \$5,838,503.00, including: Herman Menezes, LLC, Unpaid for Product, \$330,600.00.

On August 29, 2022, Plaintiff timely filed an adversary complaint to object to the dischargeability of the debt owed by Defendant to Plaintiff pursuant to 11 U.S.C. § 523.

II. Undisputed Facts

On December 19, 2019, the Plaintiff and the Bresciani entered into a contract for approximately 3,840 tons of Organic Alfalfa Hay to be produced by

1 Jungo Ranch for the 2019-2020 hay season to be sold to the Plaintiff (“the Jungo
2 Contract”). See Exhibit 1.

3 The Jungo Contract was executed in Storey County, Nevada. Also, on
4 December 19, 2020, Bresciani executed a promissory note in favor of the Plaintiff
5 in the amount of \$620,000 to secure the Jungo Contract. *Id.* The Jungo
6 Contract provided that in exchange for the Plaintiff providing Bresciani with a
7 \$620,000 deposit, the Plaintiff would pay Bresciani \$10 per ton on 3840 tons of
8 hay toward repayment of the deposit. *Id.* By virtue of this agreement, Plaintiff
9 was entitled to the hay grown at Jungo Ranch in a sufficient amount to repay the
10 deposit.

11 At the conclusion of the 2019-2020 Hay Season, Bresciani had only
12 provided Plaintiff sufficient hay to cover \$492,601.35 of the \$620,000 deposit,
13 under the Jungo Contract, leaving a balance on the agreement of \$127,398.65.
14 See Exhibit 2.

15 Bresciani breached the Jungo Contract by failing to deliver enough hay to
16 cover the \$620,000 deposit given to Bresciani by the Plaintiff. Further, from July
17 14, 2020 to August 18, 2020, Bresciani removed approximately 404 tons of hay
18 from Jungo Ranch belonging to the Plaintiff and delivered the Plaintiff’s hay to
19 Bresciani’s other customers. Thus, including the balance on the agreement of
20 \$127,398.65, Bresciani owes the Plaintiff \$38,392.35, plus commission for the
21 approximately 404 tons of hay from Jungo Ranch belonging to the Plaintiff
22 wrongfully and fraudulently taken by Bresciani. This hay was never delivered to
23 the Plaintiff because Bresciani fraudulently took the Plaintiff’s hay and delivered
24 the hay belonging to the Plaintiff to his other customers.

25 On August 5, 2020, Bresciani issued a check to the Plaintiff for the amount
26 of \$67,160 as a deposit to cover the cost of the hay owned by the Plaintiff to be
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1 removed from Taylor Farms by Bresciani. On August 5, 2020, the Plaintiff
2 received notice from Bank of America that Bresciani's check for \$67,160 was
3 returned due to insufficient funds to cover the check. See Exhibit 3.

4 On August 7, 2020, Plaintiff sent Bresciani a letter via certified mail return
5 receipt informing Bresciani that the check for \$67,160 was returned for
6 insufficient funds. See Exhibit 4.

7 Further, Bresciani removed approximately \$50,793 in hay (221 Tons) from
8 Taylor Farms in total, which Bresciani fraudulently obtained, and still has not paid
9 for. See Exhibit 5. Thus the Plaintiff incurred additional actual damages of
10 \$50,793 as a result of Bresciani passing a bad check.

11 On January 4, 2021, the Plaintiff filed a Complaint against Mr. Bresciani and
12 Bresciani Hay Company, Inc. before the First Judicial District Court in and for
13 Storey County, and asserted the following claims: fraud, breach of the implied
14 covenant of good faith and fair dealing, a claim for passing a bad check, for
15 conversion, and exemplary damages against Mr. Bresciani and his company.
16 See Exhibit 6, attached hereto. The facts underlying the complaint are verified
17 by Mark Menezes, a manager for the Plaintiff. See *Id.* at 11.

18 After Bresciani failed to follow multiple orders of the court related to
19 discovery, the Court struck Bresciani's answer and rendered default judgment in
20 favor of the Plaintiffs in a December 23, 2021 Order. See Exhibit 7, attached
21 hereto.

22 On January 28, 2022, after a Motion for Damages (See Exhibit 8). The
23 Declaration of Mark Menezes supported the Motion for Damages in Exhibit 8 at
24 page 8 of Exhibit 8, in which Mr. Menezes authenticated the relevant documents
25 supporting the damage claim.
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1 After Brescinai did not respond to the Motion for Damages, the Nevada
2 District Court issued an order awarding \$330,570.65 in damages plus
3 prejudgment and post-judgment interest in the amount of 6.75%. See Exhibit 9,
4 attached hereto.

5 **III. Argument**

6 **a. Standard of Review**

7 Pursuant to Federal Rule of Civil Procedure 56, an order granting summary
8 judgment should be issued only when there are no genuine issues of material
9 fact and the moving party is entitled to judgment as a matter of law. “The
10 purpose of summary judgment is to avoid unnecessary trials when there is no
11 dispute as to the facts before the court.” *Nw. Motorcycle Ass’n v. U.S. Dep’t of*
12 *Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). In a summary judgment motion, the
13 trial court is to perform a “threshold inquiry of determining whether there is a
14 need for a trial.” *Taybron v. City and County of San Francisco*, 341 F.3d 957, 959
15 (9th Cir. 2003) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)).
16 Summary judgment should be granted if, taking the evidence and all reasonable
17 inferences drawn therefrom in the light most favorable to the non-moving party,
18 there are no genuine issues of material fact. *Furnace v. Sullivan*, 705 F.3d 1021,
19 1026 (9th Cir. 2013). An issue of material fact is genuine if there is sufficient
20 evidence for a reasonable jury to return a verdict for the non-moving party.
21 *Thomas v. Ponder*, 611 F.3d 1144, 1150 (9th Cir. 2010). The court must not
22 weigh the evidence or determine the truth of the matter but only determine
23 whether there is a genuine issue for trial. See *Balint v. Carson City*, 180 F.3d
24 1047, 1054 (9th Cir. 1999).

26 **b. There is otherwise no genuine issue of material fact as to whether the**
27 **claim is dischargeable.**
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1 11 U.S.C. §523(a)(2)(A) provides that money, property, services, or an
2 extension, renewal, or refinancing of credit, to the extent obtained by false
3 pretenses, a false representation, or actual fraud, other than a statement
4 respecting the debtor's or an insider's financial condition, is not dischargeable.
5 As evidenced by the records from the state court proceeding below, Mr.
6 Bresciani obtained the money and property of the Plaintiff via false pretenses,
7 false representations, and/or actual fraud.

8 The undisputed facts show that Bresciani removed approximately 404 tons
9 of hay from Jungo Ranch belonging to Plaintiff and delivered Plaintiff's hay to
10 Bresciani's other customers - effectively stealing hay that Plaintiff purchased and
11 providing it to other customers. Bresciani made false representations to the
12 Plaintiff that he had the funds to pay for the hay from Taylor Farms, wrote a hot
13 check to the Plaintiff such that he could obtain permission to remove the hay
14 from Taylor Farms, and actually removed the hay from Taylor Farms based on
15 this fraudulent claim to the Plaintiff.

16 In other words, Bresciani stole about 404 tons of hay belonging to Plaintiff
17 from Jungo Ranch and sold it to other customers. This was a fraud. Bresciani
18 lied to the Plaintiff, claiming he could pay for the hay from Taylor Farms. This was
19 a false representation. He then wrote a bad check to the Plaintiff to get
20 permission to take the hay from Taylor Farms and actually did so based on this
21 deceptive promise. This was both a false representation and actual fraud.

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1 WHEREFORE, PLAINTIFF HEREBY MOVES: in accordance with Fed. R.
2 Civ. P. 56; Fed. R. Bankr. P. 7056. for summary judgment against the Defendant
3 and an order declaring that the \$330,570.65 in damages plus prejudgment and
4 post-judgment interest in the amount of 6.75% owed to HERMAN MENEZES,
5 LLC is non-dischargeable under the provisions of 11 U.S.C. § 523.

6 **DATED** this Sep 19, 2023

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8 By: /s/ Luke Busby, Esq.
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Exhibits

1. Contract and Promissory Note
2. Jungo Recap
3. Bounced Check from BOA
4. Certified Letter re Bounced Check
5. Taylor Farms Records
6. January 4, 2021 Complaint
7. December 22, 2021 Order Granting Default Judgment
8. January 3, 2022 Motion for Damages
9. January 28, 2022 Order of Damages on Default Judgment

CERTIFICATE OF SERVICE

I certify that on the date shown below, I caused service to be completed of a true and correct copy of the foregoing **MOTION FOR SUMMARY JUDGMENT** by:

_____ personally delivering;

_____ delivery via Reno/Carson Messenger Service;

_____ sending via Federal Express (or other overnight delivery service);

_____ depositing for mailing in the U.S. mail, with sufficient postage affixed thereto;
or,

 x delivery via electronic means (fax, eflex, NEF, etc.) to:

Law Office of Cliff Young
Cliff Young
650 S. Rock Blvd., Ste. 21A
Reno, NV 89502
Counsel for Alvin Bresciani

By: /s/ Luke Busby, Esq. _____
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Attorney for the Plaintiff

Sep 19, 2023